Department of Justice. By mid-1997, Bell Atlantic believed it had satisfied the 14-point checklist in section 271 of the Act. The New York PSC and the Justice Department, however, expressed concern that more needed to be done. Among other things, they wanted Bell Atlantic's Operations Support Systems to be tested to be sure that they could handle the reasonable needs of competitive local carriers.

So Bell Atlantic agreed in April 1998 to the testing of its systems by an independent third party. That test, conducted by KPMG, grew to be "much broader than [is] likely to be experienced by any CLEC," and took nearly a year to complete. And as the quotes above make clear, Bell Atlantic has received rave reviews by its competitors. In the end, Bell Atlantic satisfied 850 out of 855 test elements — an "A+" by any standard.

The New York PSC and the Justice Department also wanted a comprehensive system of self-executing remedies to ensure that Bell Atlantic provides high-quality service to competitive local carriers. So, working with the PSC, the Department of Justice, and competing carriers, Bell Atlantic proposed two comprehensive and mutually reinforcing performance assurance plans. Those plans put no less than $269 million in bill credits at risk each year and report over 1,000 different measures each month — all set against standards that hold Bell Atlantic to levels of performance found nowhere else in the country. And the data collected by those measures show that Bell Atlantic is providing excellent service.

There were also demands that Bell Atlantic undertake special efforts to accelerate local service competition for residential customers. And so Bell Atlantic agreed to make its network available to its competitors at special low rates to serve residential customers. This offer, known as the "platform," has worked. In the last eight months, MCI WorldCom alone has added more than 160,000 platform lines, the vast majority of which are to residential customers.

There have also been demands that Bell Atlantic offer more efficient access to its Operations Support Systems, that Bell Atlantic make it easier for competitors to test their own Operations Support Systems, and that Bell Atlantic increase the percentage of orders that can be handled automatically, without human intervention. Bell Atlantic has done all these things. In fact, MCI WorldCom told the California Commission that it was experiencing "customer satisfaction through proven OSS functionality" in New York.

Granting this application will do even more to promote local competition. The largest long distance carriers have recognized that, because Bell Atlantic will soon be able to offer both long distance and local service in New York, they need to accelerate their efforts to get into the local market so that they can offer local and long distance service as well. So MCI WorldCom has recently ramped up its efforts to win the local business of both residence and business customers, and AT&T is beginning to do the same. Authorizing Bell Atlantic to get into long distance will only hasten this trend.

In response to this application, the long distance carriers will no doubt attempt to manufacture reasons for more delay. Just as they did before the New York PSC, they will try to seize on competitively insignificant imperfections in Bell Atlantic's performance, pump them full of hot air, and use them to claim that the New York market is not open.

But the market is open, as the more than one million lines served by Bell Atlantic's competitors show. Chairman Kennard has testified before Congress that he "look[ed] forward to the day that I can join my fellow commissioners in granting a meritorious application for entry into interLATA telecommunications markets." This is that application.

I. BELL ATLANTIC'S APPLICATION SATISFIES THE REQUIREMENTS OF SECTION 271(c)(1)(A).

There is no question that the requirements to file a "Track A" application are met in New York. Whether they are viewed collectively or individually, competitors in New York are providing service predominantly over their own facilities and are providing service to both business and residential subscribers.

Facilities-based entry in New York is massive. Even by conservative estimates, competitors have sunk more than $1 billion dollars into competing facilities in New York — including more than 45 local switches. See Taylor Decl. Att. A ¶ 9. And they are using those facilities to provide service throughout the State — not just in New York City, but in Albany, Binghamton, Buffalo, and Syracuse. See Br. Att. A, Exh. 3. The significance of this entry goes well beyond the requirements of Track A: it also shows, and shows conclusively, that the local market in New York is open, and irreversibly so. As the Department of Justice has explained, the fact that competitors have "committed significant irreversible investments to the market (sunk costs) signals their perception that the requisite cooperation from incumbents has been secured or that any future difficulties are manageable."[1] Of course, it also means that the requirements of Track A are easily satisfied.

[1] Affidavit of Marius Schwartz ¶ 174, Competitive Implications of Bell Operating Company Entry Into Long Distance Telecommunications Services (May 14, 1997) ("Schwartz Aff."), attached to Evaluation of the Department of Justice, Application of SBC Communications Inc. et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in the State of Oklahoma, CC Docket No. 97-121 (FCC filed May 16, 1997) ("DOJ Oklahoma Evaluation").

Indeed, on a collective basis, competing carriers now serve more than *double* the number of lines using their own facilities as they serve through resale.[2] And competitors also serve more than *double* the number of *residential* customers over their own facilities as they serve through resale.[3]

On an individual basis, moreover, numerous competing carriers in New York are predominantly facilities-based and serve both business and residential subscribers. Of course, the Act, by its terms, requires no more than a single qualifying carrier. See 47 U.S.C. § 271(c)(1)(A). Nonetheless, the following provides a detailed "Track A" showing with respect to three such carriers:

1. AT&T. — Though AT&T often complains in regulatory arenas that local markets in New York are not sufficiently open, it tells a decidedly different story when it speaks with its wallet. In July 1998, AT&T completed an $11 billion acquisition of TCG, New York's most established facilities-based CLEC. See Taylor Decl. ¶ 46 & Att. A ¶ 67. Since then, AT&T has invested heavily to expand its facilities; for example, since 1998, AT&T has tripled the size of its fiber network in the New York City metropolitan area. See id. Att. A ¶ 12. Today, AT&T's

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[2]Competing carriers serve more than 650,000 lines through facilities they deployed themselves, and another 160,000-plus lines using unbundled network elements, see Taylor Decl. Att. A ¶¶ 1, 31, which the Commission previously held qualify as their own facilities for these purposes, see Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan, Memorandum Opinion and Order, 12 FCC Rcd 20543, ¶ 101 (1997) ("Michigan Order"). In contrast, competitors serve about 314,000 lines through resale. See Taylor Decl. Att. A ¶¶ 1(i), 42, Table 1.

[3]Through July 1999, competitors serve a conservatively estimated 173,000 residential customers using their own facilities. See Taylor Decl. Att. A ¶ 1(ii), Table 3. And through September, MCI WorldCom alone serves 160,000 platform customers — most of them residential. See MCI WorldCom Press Release, MCI WorldCom Shifts Resources to Florida Test of BellSouth, Sept. 9, 1999. In contrast, competitors serve less than half that number of residential customers, roughly 63,000, through resale. See Taylor Decl. Att. A ¶ 1(ii), Table 3.

local wireline network in New York includes more than 1,400 known route-miles of fiber and nine local switches (in addition to the long distance switches it uses to provide its local Digital Link service). See id. Att. A ¶¶ 12, 19, 68, Tables 6 & 7.

AT&T is providing service predominantly over its own facilities to both business and residential subscribers.[4] Although the information available to Bell Atlantic necessarily understates its number of facilities-based lines, AT&T serves *at least* [ ] access lines in New York over facilities that it has deployed. See id. Att. A ¶ 69. In addition, AT&T's white pages listings reveal that it already serves *at least* [ ] residential subscribers over its own facilities. See id. It also has announced that it plans to add even more residential customers using leased facilities, see id., and has begun an initial telemarketing effort to a cross-section of its five million long distance subscribers in New York, see id. Att. A ¶¶ 48, 69.[5] In contrast, AT&T serves only [ ] lines via resale, and has only [ ] listings for residential resale subscribers. See id. Att. A ¶ 69 n.147.

2. MCI WorldCom. — Though MCI WorldCom, like AT&T, has been known to gripe about the openness of local markets in New York, its actions, too, speak louder than its words. Through its $14 billion acquisition of MFS Communications, one of the first and largest competing local carriers in New York, its $2.4 billion acquisition of Brooks Fiber, and its own

[4]AT&T is providing competing local telephone service under three PSC-approved interconnection agreements with Bell Atlantic. The first was signed by TCG and approved in 1996, see App. F, Tab 5; the second was signed by AT&T itself and approved in 1997, see App. F, Tab 14; the third (approved in 1998) was originally signed by ACC, a facilities-based provider in upstate New York that also was acquired by AT&T, see App. F, Tab 34.

[5]See J. May, AT&T Quietly Tests Local Service in Bell Atlantic New Jersey Territory, The Star Ledger (Newark, N.J.), Aug. 4, 1999 ("AT&T plans to sign up 6,000 residential customers for local service in the Empire State over the next three months") (citing George Burnett, president of local services Eastern and Central regions, AT&T).

ongoing facilities construction, MCI WorldCom has invested heavily in competing facilities in the State. See id. ¶ 49 & Att. A ¶¶ 74-76. Today, MCI WorldCom's wireline local network in New York includes more than 300 known route-miles of fiber and seven local switches. See id. Att. A ¶¶ 13, 19, 75, Tables 6 & 7.

Like AT&T, MCI WorldCom is providing service predominantly over its own facilities to business and residential subscribers.[6] Again, while the information available to Bell Atlantic necessarily is incomplete, MCI WorldCom serves *at least* [ ] access lines in New York over facilities that it has deployed. See id. Att. A ¶ 77. In addition, MCI WorldCom has itself stated that it serves another 160,000 lines over leased (platform) facilities, most of which are residential. See supra, p.5 n.3. In contrast, MCI WorldCom serves only [ ] lines via resale, and has only [ ] listings for residential resale subscribers. See Taylor Decl. Att. A ¶ 77 n.187.

3. Cablevision Lightpath. — Cablevision, the second-largest cable operator in New York State, provides local telephone service through Cablevision Lightpath, a wholly owned subsidiary. See id. Att. A ¶ 80. Most of Cablevision Lightpath's telephony facilities are on Long Island, where its network consists of 844 known route-miles of fiber and at least one local switch. See id. Att. A ¶¶ 14, 81, Table 6. In July 1997, Cablevision Lightpath announced the introduction of a low-cost, facilities-based residential telephone service, called Optimum Telephone. See id. Att. A ¶ 81. It now makes this service available to approximately 30,000

[6]MCI WorldCom is providing competing local telephone service under two PSC-approved interconnection agreements. The first originally was signed by MFS and approved in 1996, see App. F, Tab 1; the second was signed by MCI and approved in 1997, see App. F, Tab 29.

Long Island residences and plans to make it available to each of its 1.4 million Long Island cable subscribers. See id.

Cablevision Lightpath also provides its competing local telephone service predominantly over its own facilities to both business and residential subscribers.[7] Cablevision Lightpath currently serves *at least* [ ] access lines in New York over its own facilities, see id. Att. A ¶ 82, and its white pages listings reveal that it serves *at least* [ ] residential subscribers in that way, see id. In contrast, Cablevision Lightpath serves only [ ] resale lines, and has only [ ] listings for residential resale customers. See id. Att. A ¶ 82 n.198.

II. BELL ATLANTIC SATISFIES ALL REQUIREMENTS OF THE COMPETITIVE CHECKLIST IN NEW YORK.

Just as Bell Atlantic plainly satisfies the "Track A" requirements, it unquestionably satisfies the requirements of the competitive checklist. Bell Atlantic is making all 14 checklist items available under the legally binding obligations in its PSC-approved tariffs and 57 approved interconnection agreements. See Br. Att. A, Exh. 1.[8] Moreover, Bell Atlantic is providing the checklist items in massive and rapidly increasing commercial quantities. For example, as of July 1999, Bell Atlantic had provided some 349,000 interconnection trunks, 776 collocation sites, nearly 200,000 unbundled loops (including platforms), 314,000 resold lines, 340,000 directory listings, and 181,000 ported numbers. See Br. Att. A., Exh. 2.

[7]Cablevision Lightpath is providing competing local telephone service under an interconnection agreement approved in 1997. See App. F, Tab 26.

[8]The only ongoing litigation under section 252(e)(6) that relates to these approved agreements involves a single suit filed originally by MCI. See MCI Telecomms. Corp. v. New York Tel. Co., No. 97-CV-1600 (N.D.N.Y.). Bell Atlantic also counterclaimed. The issues in that case have been briefed and are awaiting decision.

Competitors are using the checklist items to enter the local market using all three entry paths available under the Act, and they are doing so throughout the State. See Br. Att. A, Exhs. 4-6. As the Department of Justice has explained: "If actual broad-based entry through each of the entry paths contemplated by Congress is occurring in a state, this will provide invaluable evidence supporting a strong presumption that the BOC's markets have been opened." DOJ Oklahoma Evaluation at 43. Where entry has occurred on as massive a scale as it has here, the presumption is not merely strong; it is conclusive.

This is all the more true because Bell Atlantic provides the checklist items, to use AT&T's words, through "proven OSS": Bell Atlantic's industry-leading Operations Support Systems already handle several thousand transactions a day, and, as AT&T has put it, have been subject to "objective, stringent, and meaningful third-party testing."[9] In fact, KPMG, an independent third party, exhaustively tested Bell Atlantic's systems and processes on a scale "much broader than [is] likely to be experienced by any CLEC."[10] The KPMG test, conducted under the New York PSC's auspices, evaluated 855 separate items relating to pre-ordering, ordering, provisioning, maintenance and repair, billing, and relationship management and

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[9]Direct Testimony of Robert J. Kirchberger on behalf of AT&T, Joint Petition of Bell Atlantic Corp. and GTE Corp. for Approval of Agreement and Plan of Merger, Case No. PUC990100 (Va. State Corp. Comm'n filed Sept. 14, 1999); see also MCI WorldCom Press Release, MCI WorldCom Shifts Resources to Florida Test of BellSouth, Sept. 9, 1999 ("MCI WorldCom today ended its support for testing . . . in Georgia . . . . MCI WorldCom instead will shift resources to Florida, where proposed testing more closely mirrors the successful market-opening process underway in New York."); MCI WorldCom, Bringing Residential Competition to California, Comments on OANAD Proposed Decision, July 29, 1999, attached to MCI WorldCom, Notice of Ex Parte Communication, R. 93-04-003, I. 93-04-002, A. 99-03-047 (Cal. PUC Aug. 2, 1999) (MCI WorldCom is investing to serve both business and residential consumers in New York because there "economic and regulatory conditions are right.").

[10] KPMG, Bell Atlantic OSS Evaluation Project, Final Report, Aug. 6, 1999, at II-7 ("KPMG Report") (App. C, Tab 916).

infrastructure. Bell Atlantic passed the test with flying colors, satisfying 850 out of 855 of the test elements.

Indeed, Bell Atlantic's real-world performance is equally exemplary. Bell Atlantic not only provides the checklist items at a rate that keeps pace with already enormous and growing demand, but it consistently provides them on time, when competitors request them.[11] And Bell Atlantic reports a total of more than 1,000 different measures each month and has put no less than $269 million in bill credits at risk each year to guarantee that it will continue to provide high-quality service to competing carriers.

Despite all this, the long distance incumbents and their allies no doubt will argue for further delay, claiming that Bell Atlantic has not yet attained an unattainable level of absolute, metaphysical perfection. But perfection, metaphysical or otherwise, is not the standard. Instead, where retail analogues exist, the standard is "parity," which does not mean perfection, but rather that, where differences do exist, they are not so large as to be competitively significant. See Michigan Order ¶ 278 ("holding Ameritech to an absolute-perfection standard is not required by the terms of the competitive checklist.").[12] Likewise, where no retail analogue exists, access

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[11]Based on discussions with the New York PSC Staff, Bell Atlantic grouped the most important measures into families based on the competitive "checklist" item to which they relate. See Dowell/Canny Decl. ¶¶ 164-170 & Att. G. These checklist groupings confirm that Bell Atlantic is providing an exemplary level of service across all the categories.

[12]See also Letter from William E. Kennard, Chairman, FCC, to Sen. John McCain and Sen. Sam Brownback, at 2 (Mar. 20, 1998) ("Nondiscriminatory access requires BOCs to show that 'parity' has been achieved, not 'perfection.'"); Evaluation of the United States Department of Justice at 28, Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208 (FCC filed Nov. 4, 1997) (FCC should not "require 'perfection' in OSS offerings as a condition of section 271 approval"; relevant inquiry is whether differences that do exist "materially impact competition"); Performance Measurements and Reporting Requirements for Operations Support Systems, etc., Notice of Proposed Rulemaking, 13 FCC Rcd 12817, App. B ¶ 7 (1998) ("even if statistically significant differences appear between

must be "sufficient to allow an efficient competitor a meaningful opportunity to compete." Second Louisiana Order ¶ 87.[13] And as the more than one million lines already being served by Bell Atlantic's competitors show, these standards are unquestionably satisfied in New York.

In short, the checklist is satisfied, the local market is open, and gas continues to flow through the pipeline in ever increasing volumes.

A. Interconnection (Checklist Item 1).

Bell Atlantic is providing interconnection in a manner fully consistent with the Act and the Commission's rules, and actual, real-world experience proves that Bell Atlantic is able to meet massive and increasing demand. Although there have on occasion been difficulties in coordinating with competing carriers, it is clear that, as far as Bell Atlantic's side of the matter is concerned, it has delivered. And, as the proverbial icing on the cake, Bell Atlantic satisfied all of KPMG's test criteria for interconnection and collocation.

1. Interconnection Trunks.

Through July, Bell Atlantic has provided 37 competing carriers with 349,000 interconnection trunks, roughly a third of which were added this year alone. See Lacouture/Troy Decl. ¶ 8.[14] To put this number in perspective, it is equal to more than *one third* of the total

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results for the incumbent LEC and the competing carrier, these differences may be too small to have any practical competitive consequence").

[13] Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20599, ¶ 87 (1998) ("Second Louisiana Order").

[14] The interconnection trunks provided by Bell Atlantic under its tariffs and interconnection agreements include interconnection to the trunk sides of end office and tandem switches, and to Bell Atlantic's signaling network. See Lacouture/Troy Decl. ¶ 7. In addition, they include both one-way and two-way trunks, 64 Kbps Clear Channel trunks, and traditional 56 Kbps trunks. See id. ¶¶ 9, 13. And, while no CLEC has ordered it, Bell Atlantic's tariffs also make available line side interconnection, and it has been providing this form of interconnection for long distance and wireless carriers for years. See id. ¶¶ 7, 14.

number of trunks that Bell Atlantic has connecting its switches in its entire interoffice network in the State. See id. Through these local trunks, competing carriers have exchanged an average of 2.5 billion minutes of traffic per month with Bell Atlantic in 1999. See id. ¶ 10.

Even in the face of rapidly growing demand, Bell Atlantic provides interconnection trunks on time. During the first seven months of 1999, Bell Atlantic met over 99 percent of the due dates for CLEC interconnection trunks. See id. ¶ 16. In fact, for additions of up to 192 trunks (tracked by the PSC), Bell Atlantic delivers the trunks *faster* than the 18-day interval approved by the PSC, and *faster* than Bell Atlantic provides Feature Group D trunks for its own interexchange carrier customers. See id. ¶¶ 16, 17. Moreover, Bell Atlantic itself currently has no backlog of CLEC trunk orders (although some CLECs are themselves holding orders because they have run out of spare hooks on their own switches to install additional trunks). See id. ¶¶ 16, 18, 25. And, to accommodate anticipated future demand, Bell Atlantic is expanding its capacity to add interconnection trunks to its switches by more than 600,000 trunk terminations this year and another half million next year. See id. ¶ 12.

Bell Atlantic also provides better service to competing carriers than it provides to itself. To provide a sense of the extraordinary extent (and expense) to which Bell Atlantic has gone to ensure good service, the ratio of "trunks required" to "trunks in service" is far better for competing carriers than it is for Bell Atlantic's own common final trunk groups: currently 46.4 percent versus 71.1 percent. See id. ¶ 22.[15]

[15] As a result of these herculean efforts, fewer final trunk groups between Bell Atlantic and competing carriers experience blocking (3.05 percent) than final trunks in Bell Atlantic's own network (3.67 percent). See Lacouture/Troy Decl. ¶ 21.

2. Collocation.

Bell Atlantic also provides collocation so that competing carriers can interconnect and obtain access to unbundled network elements. Through July of this year, Bell Atlantic has placed in service some 776 collocation sites in central offices located throughout the State. See id. ¶¶ 29, 46; Taylor Decl. ¶ 46 & Att. A ¶¶ 21, 22 & Exh. 5. More than 60 percent of the collocation sites (nearly 500) were added in 1999 alone. See Taylor Decl. Att. A ¶ 21 & Fig. 1. Again, to put the numbers in perspective, competitors now are collocated in central offices that serve 85 percent of Bell Atlantic's access lines in New York. See Lacouture/Troy Decl. ¶ 29; Taylor Decl. Att. A. ¶ 22.

Most of the collocation arrangements in Bell Atlantic's central offices are for physical collocation, which it began offering as long ago as 1991. See Lacouture/Troy Decl. ¶¶ 29, 46, 52; Taylor Decl. ¶ 21. Even before this Commission's recent Collocation Order,[16] Bell Atlantic offered a number of non-traditional kinds of collocation arrangements, including "mini" and "shared" cages and various forms of cageless collocation in secured space. See Lacouture/Troy Decl. ¶¶ 50-51. Bell Atlantic also offers virtual collocation in each of its central offices, and has actually provided 26 such arrangements. See id. ¶¶ 45, 46. In addition, in the wake of the recent Collocation Order, Bell Atlantic has tariffed an additional "cageless" collocation arrangement that fully complies with this Commission's rules, and is now on schedule to provide 55 such arrangements on a timely basis. See id. ¶¶ 41-44. In fact, each of the collocation offerings required by the Collocation Order is now available under tariff. See id. ¶¶ 27-28, 31-32, 41, 48-

[16] See Deployment of Wireline Services Offering Advanced Telecommunications Capability, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761 (1999) ("Collocation Order").

50; see also Cases 99-C-0715 & 95-C-0657, PSC, Order Directing Tariff Revisions, Aug. 31, 1999 (App. I, Tab 19) ("PSC Collocation Order").

Bell Atlantic also has taken extraordinary steps to make collocation space available in its central offices, going so far as to relocate its own personnel's work areas. See Lacouture/Troy Decl. ¶ 36. As a result, it has been able to make collocation space available in 210 of the 213 offices where CLECs have requested collocation. See id. ¶ 35. In those extremely rare instances where space is unavailable, Bell Atlantic allows CLEC representatives to tour the relevant central office within 10 days of being notified by the CLEC that it wants such a tour. See id. ¶ 38. And, as an alternative to physical collocation inside the central office, CLECs are given the option of establishing controlled-environment vaults adjacent to the central office. See id. ¶ 54.

Bell Atlantic also provides collocation in a timely manner.[17] The New York PSC has adopted a 76-day interval for physical collocation arrangements and a 105-day interval for virtual collocation arrangements. See id. ¶¶ 32, 47. From May through July 1999, Bell Atlantic met that interval or the competing carrier's requested due date virtually every time, with on-time delivery approaching 100 percent. See id. ¶¶ 33, 49. And there is no backlog for collocation requests of any kind; Bell Atlantic is firmly on track to fill its pending orders on time. See id. ¶¶ 33, 49.

[17]Bell Atlantic has not sacrificed quality in meeting its collocation requests on time. Rather, to ensure that collocation arrangements meet its quality specifications, Bell Atlantic has instituted a formal quality-review process under which auditors check each collocation arrangement prior to turning it over. See Lacouture/Troy Decl. ¶¶ 57-59; KPMG Report RMI5 VII68-75 (Table VII5.5; Test Cross Reference R5.2-8). So far in 1999, there has not been a single instance where a CLEC was prevented from installing its equipment and using the cage to provide service. See Lacouture/Troy Decl. ¶ 34. On the contrary, any corrective work that is needed can and does proceed in parallel with the installation work performed by the CLEC after the cage is turned over. See id.

Moreover, Bell Atlantic has the resources to respond to rapidly increasing demand. See id. ¶ 30. It has dedicated more than 80 employees, including 20 project managers, just to collocation matters. See id. ¶ 31. It has implemented detailed collocation-related procedures, which both the PSC and KPMG have endorsed as satisfactory in every respect. See id. ¶¶ 31, 57-61; PSC Collocation Order; KPMG Report RMI5 VII68-75 (Table VII5.5; Test Cross References R5.2-1 through R5.2-7). This investment in resources has paid off. Bell Atlantic has proven that it is ready to tackle a surge in demand: in one peak month alone in 1999, it was able to complete 83 collocation arrangements. See Lacouture/Troy Decl. ¶ 30.

B. Unbundled Network Elements (Checklist Items 2, 4, 5, and 6).

Bell Atlantic is currently providing large commercial volumes of unbundled network elements, including unbundled local loops, local switching, and local transport. For example, through July, Bell Atlantic already had provided nearly 200,000 unbundled loops. As of August, more than 150,000 of the loops it has provided are part of a full "platform" of unbundled elements that also included switching and transport. And Bell Atlantic has kept pace with rapidly increasing demand; it consistently delivers unbundled elements on time, when competing carriers ask for them.

In addition, throughout the proceeding conducted by this Commission on remand from the Supreme Court, Bell Atlantic continued voluntarily to provide each of the seven elements required by the Commission's former Rule 319. It has also provided combinations of network elements, including both unbundled element platforms and so-called Enhanced Extended Loops ("EELs"), under terms approved by the New York PSC. Of course, to the extent the Commission's new rules differ from the elements and combinations that Bell Atlantic now provides, Bell Atlantic will modify its unbundled element offerings accordingly. But there can

be no question that Bell Atlantic is capable of providing the various elements or combinations of elements, given the large and increasing volumes it already provides.

1. Unbundled Local Loops.

Through July alone, Bell Atlantic provided 44,000 unbundled loops on a stand-alone basis. See id. ¶ 66. In addition, Bell Atlantic has provided 152,000 additional loops as part of platforms. See id. Bell Atlantic also has successfully kept pace with rapidly increasing demand: from May through August 1999, Bell Atlantic provided 97,000 unbundled loops, including 86,000 loops as part of platforms. See id. And in July alone, Bell Atlantic supplied almost 40,000 unbundled loops. See id.

In the face of this rapidly growing demand, Bell Atlantic consistently has delivered unbundled loops (including platforms) on time. For example, the vast majority of the unbundled loops that Bell Atlantic provides to competitors are new voice grade loops or loops that are part of platforms. Yet, even as volumes for these loops increased dramatically in July and August, Bell Atlantic completed more than 99 percent of these new loop and platform orders on time. See id. ¶ 68. And, as the "missed appointment" measures reported to the New York PSC show, Bell Atlantic is meeting its installation dates for CLEC unbundled loop orders, and consistently meets them a higher percentage of the time than it does for its own retail orders. See id.

Of course, this does not mean (nor should it) that various measures of the intervals to deliver unbundled loops and platforms will be the same as for retail orders. CLECs frequently request delivery on dates that are later than they would be under the intervals that are available to them. See id. ¶ 76; Gertner/Bamberger Decl. ¶¶ 5, 13. Even MCI WorldCom has candidly admitted that this is the case: "Because MCI WorldCom requested longer intervals for certain

UNE-P products, BA's overall average interval offered and completed metrics may be longer than they otherwise would be for this period."[18]

This is borne out by the missed appointment measures reported to the PSC. Those measures, which were verified by KPMG, show that Bell Atlantic installs unbundled loops and platforms on time. See Dowell/Canny Decl. ¶ 68; Lacouture/Troy Decl. ¶ 68. Since Bell Atlantic is installing loops and platforms on time, the fact that installation intervals are longer for unbundled loops than for retail orders can only mean that CLECs are asking for longer intervals.

As further proof, Bell Atlantic commissioned Dr. Robert Gertner of the University of Chicago to perform a statistical analysis of the relevant provisioning intervals for June, July, and August. Dr. Gertner's analysis demonstrated three things. First, it confirmed that Bell Atlantic is completing CLEC loop and platform orders in the same intervals that CLECs request. See Gertner/Bamberger Decl. ¶¶ 5, 12. Second, it confirmed that CLECs frequently do request longer intervals. See id. ¶¶ 5, 13. Third, it revealed that, in those instances where CLECs request the normal intervals that are available to them, they get them. See id. ¶¶ 5, 14. In short, it provided further confirmation that Bell Atlantic delivers unbundled loops on time.

During the course of the New York proceeding, a number of concerns were raised with respect to one small subset of loops — those that are provided through a "hot cut" procedure. Any genuine concerns, however, now are (or should be) firmly a thing of the past.

The "hot cut" procedure is typically requested for loops that already are connected to Bell Atlantic's switch and are being used to provide service to a customer. See Lacouture/Troy Decl. ¶ 69. In order to transfer these loops (and the customers using them) to CLECs, they must be

[18]MCI WorldCom's Brief on BA-NY's Compliance with Section 271 Checklist at 16 nn.14-15 (filed Aug. 17, 1999) (App. C, Tab 946).

disconnected from a Bell Atlantic switch and reconnected to a CLEC switch, at the same time the LNP database is updated to direct the customer's calls to the CLEC's switch, rather than Bell Atlantic's switch. To minimize the time during which the customer's service is interrupted (the goal is fewer than five minutes), Bell Atlantic and the competing carrier must closely coordinate their actions. See id. ¶ 69. In response to concerns raised in New York, Bell Atlantic put in place in April a revised set of operating methods and procedures, and implemented on June 21, 1999, a comprehensive tracking process designed under the close supervision of the New York PSC. See id. ¶ 70. To ensure that Bell Atlantic's technicians follow the hot-cut procedures, they use a checklist developed by the New York PSC that is attached to each hot-cut order sent to a technician. See id.

These procedures are working, and Bell Atlantic's actual hot-cut performance is excellent. During the 13-week period from June 21 to September 17, 1999, Bell Atlantic has completed over 94 percent of its 4,497 hot-cut orders on time and as requested. See id. ¶ 72.[19] Since there are about five lines per order, this means that Bell Atlantic successfully completed more than 21,000 individual hot cuts during this period. See id.[20]

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[19]Continuing complaints about hot-cut performance from certain CLECs (with obvious ulterior motives) have crumbled when subjected to independent, in-depth review. For example, AT&T dumped thousands of pages of "evidence" on the New York PSC claiming that its data showed Bell Atlantic's hot-cut performance was only in the 70 percent range. See Lacouture/Troy Decl. ¶ 75. The PSC Staff, under the aegis of an Administrative Law Judge, undertook a detailed reconciliation of that "evidence." See id. The vast majority of the allegedly faulty hot cuts proved to be caused by problems other than those within Bell Atlantic's control. See id. And, while the PSC Staff did identify eight missed hot cuts that Bell Atlantic should have included in its measure, that represents an error rate of only about 1.5 percent and was reflected in the on-time performance Bell Atlantic reported. See id.

[20]During the same period, Bell Atlantic provided more than 70,000 other unbundled loops to its competitors, so the small number of hot-cut loops that were not provisioned on time is a vastly smaller percentage of all the unbundled loops that Bell Atlantic provides under the competitive checklist.

Bell Atlantic's real-world performance is backed up by the KPMG Report. See id. ¶ 73. KPMG tested Bell Atlantic's hot-cut performance over a two-week period. See id. The KPMG test covered the entire State, and KPMG's inspectors — frequently accompanied by PSC Staff — arrived at Bell Atlantic's central offices without prior warning. See id. KPMG found that Bell Atlantic's central office technicians followed the required hot-cut procedures 97 percent of the time. See KPMG Report POP5 IV118 (Test Cross Reference P5-21); POP12 IV285-299 (Table IV2.6; Test Cross Reference P12-3); Lacouture/Troy Decl. ¶ 73. Moreover, KPMG confirmed that, when hot-cut orders had to be rescheduled, the delay was attributable to a CLEC's error or request 68 percent of the time, and was attributable to Bell Atlantic only 11 percent of the time. See KPMG Report POP12 IV285-299 (Table IV2.6; Test Cross Reference P12-3); Lacouture/Troy Decl. ¶ 73.

Finally, Bell Atlantic provides unbundled loops for use by competing carriers to provide DSL services. See Lacouture/Troy Decl. ¶¶ 77, 80. These services are still new and require close cooperation from CLECs during the provisioning process. As a result, the New York PSC is conducting an ongoing collaborative proceeding that includes Bell Atlantic and interested CLECs to refine procedures for both sides to use so that the process goes smoothly for all. In the meantime, however, competing carriers already serve several times as many DSL customers using unbundled loops as Bell Atlantic serves. See id. ¶ 86.

CLECs in New York have provided DSL services using at least two types of unbundled loops. In some cases, they have provided DSL services using Bell Atlantic's premium digital

loops. See id. ¶ 77.[21] Through August, Bell Atlantic provided more than 3,000 of these loops to CLECs (though it has no way to know definitively which are used for DSL). See id. ¶ 78. From June through August, it provided 97 percent of the premium loops on time. See id. ¶ 79.

In addition, Bell Atlantic provides unbundled loops that are designed specifically to provide DSL services. See id. ¶ 80. Through August, Bell Atlantic provided approximately 520 ADSL-specific unbundled loops to six carriers. See id. And it has provided these ADSL loops in the same interval as its own ADSL service. See id. ¶ 82.[22]

Bell Atlantic also provides loop "conditioning" services when needed. See id. ¶ 83. ADSL service works only on loops that have no load coils and typically requires that they not have other electronic impediments on them (that are used on certain loops to make them suitable for voice services).[23] At the request of CLECs, Bell Atlantic will "condition" the loop (for example, by removing load coils or other impediments) to make it suitable for DSL service. See id. ¶ 83. Bell Atlantic does so, moreover, even though it will not similarly condition loops for its own commercial ADSL service. See id. In fact, Bell Atlantic has tariffed a new loop offering (called the Digital Designed Loop), which provides competing carriers with a package of standardized terms and options for conditioning loops, loop extensions, and related services. See id.

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[21]Because premium loops are designed for ISDN, not DSL, they are sometimes provided over subscriber line carrier (with fiber in the loop), and CLECs have been told as much. See Lacouture/Troy Decl. ¶ 77.

[22]Even more so than with hot-cut loops, the number of DSL loops that Bell Atlantic provides to competitors is a tiny fraction of all the unbundled loops that it provides in any month under the competitive checklist.

[23]See Deployment of Wireline Services Offering Advanced Telecommunications Capability, Memorandum Opinion and Order, and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, ¶ 29 n.46 (1998).

In addition, Bell Atlantic provides competing carriers with all of the same loop "qualification" information that is available to its own retail marketing representatives, and more. See id. ¶¶ 84-85. Bell Atlantic is currently engaged in a laborious survey of its entire loop inventory — on an office-by-office basis (starting with the concentrated urban offices where CLECs are collocated) — to identify loops that are ADSL capable. See id. ¶ 84. By year-end 1999, 93 percent of Bell Atlantic's central offices in New York with completed or pending collocation orders — which contain about 90 percent of Bell Atlantic's lines — will be pre-qualified. See id. Where an office has been pre-qualified, Bell Atlantic provides competing carriers with electronic access to all the same loop qualification information at the same time it is made available to Bell Atlantic's retail organization. See id. ¶ 85. In fact, Bell Atlantic goes even further and provides competing carriers with information about loop length, which it does not provide to its own retail representatives. See id. And if a competing carrier wants information about a loop that is in a central office that has not been pre-qualified, or wants more information than is in the loop qualification database, Bell Atlantic will manually collect and provide that information — again, even though it will not do this for its own retail organization. See id.

2. Unbundled Local Transport (Including Interoffice Facilities).

Bell Atlantic has provided shared transport on each of the more than 152,000 unbundled local switch ports it has provided to CLECs. See id. ¶ 113.[24] Because shared transport is

[24]Bell Atlantic provides both shared and dedicated transport under its tariffs and approved interconnection agreements. See Lacouture/Troy Decl. ¶ 106 & Atts. 1 & 2. This includes shared transport between Bell Atlantic end-office switches, between Bell Atlantic tandem and end-office switches, and between tandem switches. See id. ¶¶ 106, 111. In addition, Bell Atlantic exceeds this Commission's requirements by also offering shared transport for access to other points within Bell Atlantic's network, such as its operator services and Directory Assistance platforms. See id. ¶ 111.

provided as part of platforms, it has been delivered at the same time as the accompanying loops and unbundled switching. As discussed above, Bell Atlantic provides those loops on time, when CLECs request them, and the same is true of unbundled shared transport. For example, during June, July, and August, Bell Atlantic completed 99 percent of its platform (and, therefore, shared transport) orders on time. See id. ¶ 68.

Bell Atlantic also has provided 325 dedicated local transport facilities to competing carriers. See id. ¶ 108. In the case of dedicated transport, a comparison to Bell Atlantic's closest retail analogue shows that Bell Atlantic is now meeting its due dates for CLEC orders more often than it is meeting the due dates for itself. See id. ¶ 109. In addition, to improve performance even further on wholesale and retail orders alike, Bell Atlantic is adding new interoffice facilities on a massive scale in 1999 — 130 percent more than it added in 1998. See id. ¶ 110. Nearly half of this construction was completed in the first half of the year. See id. And the expansion of capacity is having its desired affect. In August, Bell Atlantic's on-time completion rate for unbundled local transport orders was better than for its own retail service. See id. ¶ 109.

3. Unbundled Switching.

Bell Atlantic has provided more than 152,000 unbundled local switching elements in New York, all but about 50 as part of platforms that include the loop. See id. ¶ 91.[25] It also has provided unbundled tandem switching in connection with each of these platform orders. See id. ¶ 98.

[25]Bell Atlantic provides local switching under its tariffs and approved interconnection agreements, through both line-side and trunk-side ports, and the provision of local switching includes all capabilities available in Bell Atlantic's local and tandem switches. See Lacouture/Troy Decl. ¶ 90. Bell Atlantic also provides, upon request, access to all vertical services loaded in its switches, even if it has not activated them for its own use. See id. ¶ 90 & Atts. 1 & 2.

As with unbundled loops and transport, moreover, Bell Atlantic consistently provides unbundled switching elements (virtually all of which are provided as part of platforms) on time. For example, during June, July, and August 1999, Bell Atlantic provided more than 99 percent of unbundled switching ports by the due date. See id. ¶ 92. Bell Atlantic also consistently meets its installation dates for unbundled switching orders at least as often as it meets the dates for its own retail orders. See id. ¶ 94. Moreover, KPMG confirmed that Bell Atlantic is equipped to handle more than 570,130 orders per year. See id. ¶ 91; KPMG Report POP6 IV138-49 & App. C.

As required by this Commission's rules, Bell Atlantic provides (using line-class codes) customized routing so that CLECs can direct directory-assistance and operator-services traffic to their own platforms. See Lacouture/Troy Decl. ¶ 95. Bell Atlantic also offers a standard configuration that routes a CLEC's traffic by using the same line-class code translations and office-dialing plans that Bell Atlantic uses in each switch, but it gives competitors the option of branding their directory-assistance and operator-services traffic. See id. ¶ 97. While an issue was raised in the New York proceeding with respect to the way these dialing plans initially were established, Bell Atlantic modified its processes, KPMG reviewed and approved those modifications, and this issue has been resolved.[26] Finally, consistent with this Commission's rules, Bell Atlantic provides terminating usage data to all competing carriers, which enables them to bill for exchange access. See id. ¶ 101.[27]

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[26]KPMG initially noted several exceptions relating to the way Bell Atlantic established these dialing plans. In response, Bell Atlantic implemented process improvements and testing procedures to address KPMG's concerns. KPMG subsequently closed its exceptions, finding that these measures satisfied its earlier concerns. See KPMG Report RM15 VII66-68 (Table VII5.4).

[27]Bell Atlantic does not provide competing carriers with billing records for the local calls completed to these carriers' unbundled local switching ports because competing carriers are not